

**Rulemaking Hearing Rules of Tennessee Auctioneer Commission  
Department of Commerce and Insurance**

**Chapter 0160-1, Regulations of Auctioneers, New Rules**

**0160-1-.16 Non-Auctioneer Firm License Application.**

(1) Upon application to the Commission for an auction firm license or renewal thereof by any business entity, including a limited liability company, corporation or partnership not engaged in the auction business as the entity's principal business, the applicant shall designate a natural person who is an employee, owner, shareholder, partner, or member of the entity, who meets the applicable requirements of T.C.A. § 62-19-111 and who will be responsible for such license.

(2) An Auction firm as described in paragraph (1), must have at least one (1) licensed auctioneer to conduct and call auctions for the firm at each location involved in auction sales.

Authority: T.C.A. §§ 62-19-102 and 62-19-106.

**0160-1-.17 Charity Auction Exemption.**

(1) An individual or entity may claim an exemption from licensure under T.C.A. § 62-19-103(4) as it relates to auctions on behalf of a political party, church, or charitable corporation or association, provided that any such individual or entity providing auction services shall not be compensated, and 100% of the net proceeds of such sale shall be donated to such political party, church, or charitable organization or association.

(2) Any organization registered with the Secretary of State as a charitable corporation as required by T.C.A. § 48-101-504(a), or exempt from the registration requirement pursuant to T.C.A. § 48-101-502, or any organization granted an exemption from taxation pursuant to the provisions of 26 U.S.C. § 501(c)(3) of the Internal Revenue Code shall be considered a charitable corporation or association for the purpose of T.C.A. § 62-19-103(4).

Authority: T.C.A. §§ 62-19-103 and 62-19-106.

**0160-1-.18 Electronic Media Auction License Requirement.**

(1) Any electronic media or computer-generated auction originating from within Tennessee shall conform to the requirements of Tennessee Code Annotated, Title 62, Chapter 19 et seq. (Auctioneer Licensing Law) and the Rules of the Tennessee Auctioneer Commission.

Authority: T.C.A. §§ 62-19-102 and 62-19-106.

**0160-1-.19 Types of Auctions Defined.**

(1) Absolute auction/auction without reserve - An auction at which property put up for sale is sold to the highest bidder, where the seller may not withdraw the property from the auction after the auctioneer calls for bids unless no bid is made in a reasonable time, where the seller may not bid himself or through an agent, and where the seller will deliver marketable title.

(2) At auction/auction with reserve - An auction at which the seller or his agent reserves the right to establish a minimum bid, to accept or reject any and all bids, and to withdraw the property at any time prior to the completion of the sale by the auctioneer.

Authority: T.C.A. § 62-19-106.

**0160-1-.20 Advertising Guidelines.**

(1) Advertising in any form that is designed to give notice of an upcoming auction must include the name and license number of the auction firm or gallery responsible for holding the sale.

(2) False, deceptive, misleading and untruthful advertising is expressly prohibited. Any advertisement or advertising shall be deemed to be false, deceptive, misleading or untruthful, if it

(a) contains a misrepresentation of fact.

(b) is misleading or deceptive because in its content or in the context in which it is presented, it makes only a partial disclosure of relevant facts.

(c) creates a false or unjustified expectation of the services to be performed.

(d) contains any representation or claim that the advertising licensee in bad faith fails to perform.

(e) advertises any auction using such descriptive words as "Urgent," "Emergency," "Distress," or any other word which connotes a liquidation of assets or that the buyers will, for some extraordinary reason, be in a position to reap some unusual bargain, without specifically disclosing, the reason that the sale is "urgent," the nature of the "emergency" or the cause of the "distress." In a written advertisement, the reason, nature, and cause shall be set forth in a print size equal to the descriptive word used.

(f) advertises any auction using descriptive words such as "Seized," "Confiscated," "Forfeited," or any other word which connotes a governmental action; the sale of items seized or taken by a government department, agency or commission; or that buyers will for some governmental

reason be in a position to reap some unusual bargain, without specifically disclosing the exact nature of the governmental action. In a written advertisement, the nature of the governmental action shall be set forth in a print size equal to the descriptive word used.

(g) advertises in bad faith an item for sale that the auctioneer, auction firm or gallery does not intend to offer for sale at the auction being advertised.

(3) Advertising for a sale at which some items will be auctioned with reserve and some items will be auctioned without reserve shall clearly and conspicuously indicate this fact to the public. In written advertisements for such a sale, the font size, style and case of the type used in publicizing the part of the sale is to be held without reserve shall not differ from the font size, style and case used to publicize the part of the sale to be held with reserve.

(4) Any advertising or advertisement purporting or suggesting that an auction sale is being held in conjunction with or as a result of a bankruptcy proceeding, or that items to be sold at auction were previously purchased in connection with a bankruptcy proceeding shall contain the bankruptcy court case number assigned by the court of jurisdiction for such proceeding.

(5) An auctioneer, auction firm or gallery shall not permit its name or license number to appear on any advertisement not in compliance with Tennessee Code Annotated, Title 62, Chapter 19 et seq. (Auctioneer Licensing Law) and the Rules of the Tennessee Auctioneer Commission.

Authority: T.C.A. §§ 62-19-106 and 62-19-118(c)(2).

**0160-1-.21 Disclosure of Buyer's Premium.**

(1) An auctioneer, auction firm or gallery shall disclose the existence and amount of any "buyer's premium," commission, or fee to be charged to buyers at an auction sale. Such disclosure shall be made in all advertising and orally announced immediately prior to the start of an auction.

Authority: T.C.A. §§ 62-19-106 and 62-19-118(c)(2).

**0160-1-.22 Late Renewal of License.**

(1) A licensee applying to renew a license two (2) months or less after the expiration date thereof shall pay in addition to any fees required for renewal, a penalty of fifty dollars (\$50.00).

(2) A licensee applying to renew a license more than two (2) months after the expiration date thereof, but less than six months, shall reapply for licensure and pay a penalty of one hundred fifty dollars (\$150.00).

(3) A licensee applying to renew a license six months or more after the expiration date thereof, but less than two (2) years, shall reapply for licensure and pay a penalty of two hundred dollars (\$200.00).

(4) Upon written submission of good cause shown, the Commission may by a majority vote waive any or all of the penalties and requirements in paragraphs 1-3 of this rule, including but not limited to reexamination and additional education requirements, or in lieu thereof impose such other reasonable conditions or requirements as it deems appropriate.

(5) A licensee delinquent in the renewal of a license for two (2) years or more shall reapply for licensure and satisfy all requirements for obtaining such license.

Authority: T.C.A. §§ 62-19-106 and 61-19-111.

**0160-1-.23 Retirement of License.**

(1) Upon written request accompanied by the license certificate, pocket card and the appropriate fee as set forth in Rule 0160-1-.14 of these rules, an auctioneer or apprentice auctioneer may retire such auctioneer's or apprentice auctioneer's license.

(2) Only a license that is current and in good standing with the Commission may be retired. For the purposes of T.C.A. § 62-19-112(d) and this rule, "current and in good standing" shall mean the license is valid and unexpired, all applicable fees and any outstanding penalties have been paid by the licensee, the licensee has met all applicable continuing education requirements, and the license is not under any current disciplinary sanction.

(3) Expired licenses renewed pursuant to rule 0160-1-.22 shall be deemed valid and unexpired for the purposes of this rule.

(4) No contribution to the Education and Recovery Account or continuing education shall be required of a licensee whose license is in retirement.

(5) A retired license may be activated upon submission to the Commission of a written application, the payment of the appropriate fees as set forth in Rule 0160-1-.14 and proof that the applicant has obtained at least six (6) hours of continuing education in the two year period immediately preceding the date of application.

Authority: T.C.A. §§ 62-19-106 and 62-19-112(d).

0160-1-.24 Notification of Change of Information.

(1) Within sixty (60) days of occurrence, a licensee shall notify the Commission in writing of any change in information previously submitted by the licensee to the Commission. Such information includes but is not limited to the licensee's business address, auction escrow account data and the employment, termination or resignation of any apprentice.

Authority: T.C.A. §§ 62-19-106 and 62-19-111.

Amendments

Rule 0160-1-.11 Civil Penalties is amended by adding the following language as new paragraph (2) and renumbering existing paragraph (2) as paragraph (3):

(2) The Commission's administrative director and investigator, acting on behalf of the commission, may issue citations to unlicensed individuals or entities in accordance with T.C.A. § 62-19-126 and the following schedule:

VIOLATION	PENALTY
T.C.A. § 62-19-102(a)(1) .....	\$50-\$2,500
T.C.A. § 62-19-102(a)(2) .....	\$50-\$2,500
T.C.A. § 62-19-102(b) .....	\$50-\$2,500
T.C.A. § 62-19-125(a) .....	\$50-\$2,500

Authority: T.C.A. §§ 56-1-308, 62-19-106, and 62-19-126.

Rule 0160-1-.12 Apprentices-Sponsors-Supervision is amended by adding the following language as appropriately designated paragraphs:

(9) An apprentice:

(a) may not execute a contract to conduct an auction without the approval of his/her sponsor noted on the document, but he/she may sign a contract in order to indicate he/she procured the client and the auction.

(b) may not sign a closing statement or have an escrow or trust account in his/her name as a depository for auction proceeds, but he/she may take part in the closing and settlement proceedings of an auction. An apprentice's sponsoring auctioneer is responsible for keeping the account of and dispersing money received at an auction.

(c) may not call bids at an auction without the presence of his/her sponsor. An apprentice's sponsor is responsible for all auctioning activities of the apprentice and must be physically present to monitor those activities.

(10) An apprentice shall provide the Tennessee Auctioneer Commission with sufficient proof that he/she has been active during his/her apprenticeship. Each apprentice shall use a log as a means to keep track of his/her experience during the two (2) year apprenticeship period. The log shall be completed and submitted with his/her application for an auctioneer license, at the conclusion of the apprenticeship.

(a) Points. An auction is divided into eight (8) parts. Each part has a point value assigned to it. Performance of any of the activities listed on the Point System Chart earns the apprentice the corresponding points. The details of these activities and their point values shall be included in an apprentice's log. During the two (2) year apprenticeship period, an apprentice shall obtain a minimum of 1,000 points in order to be eligible for an auctioneer license. This is the substantial equivalent of working five (5) auctions from beginning to end.

(b) Sponsor's Signature. A sponsoring auctioneer shall acknowledge each auction activity recorded in his/her apprentice's log by signing and dating in the appropriate space after each entry of activity.

(c) Accumulating Points. An apprentice should make every effort to obtain and log experience in all phases of the auction business. An apprentice shall not submit a log with all of his/her experience concentrated in fewer than four (4) auction activities. The purpose of the log is to indicate to the commission that the apprentice has been fully exposed to the auction business and has participated in as many areas of the auction process as possible.

(11) POINT SYSTEM CHART

ACTIVITY	DESCRIPTION	POINTS
CONTRACT	Complete and execute a contract with a seller (in accordance with subparagraph (9)(a) of this rule).	20
ADVERTISING	Write inventory/create a newspaper ad/erect signs	20
SALE PREPARATION	Prepare inventory for an auction or set up action equipment.	20
BID CALLING	Call bids at an auction.	60
BID ASSISTANT/WORKING RING	Work the ring at an auction for at least one (1) hour.	40
CLERKING/CASHIERING	Clerk at least 30% of an auction or collect money for at least 30% of an auction.	20
CLOSING	Participate in balancing auction proceeds and assist in preparation of a closing statement.	20
TOTAL POINTS		200

Authority: T.C.A. § § 62-19-106 and 62-19-111.

Rule 0160-1-.14 Fees is amended by deleting the rule in its entirety and substituting the following language so that as amended the rule shall read:

0160-1-14 Fees.

(1) Each application for licensure shall be accompanied by a non-refundable application fee of twenty-five dollars (\$25.00), and where applicable, a non-refundable examination fee as set by contract with the Tennessee Auctioneer Commission license examination administrator.

(2) Fees for the issuance of initial licensure and the renewal thereof shall be as follows:

Auctioneer License .....	one hundred and fifty dollars (\$150.00)
Apprentice Auctioneer License .....	one hundred dollars (\$100.00)
Auction Firm License .....	one hundred dollars (\$100.00)
Gallery License .....	one hundred dollars (\$100.00)
Auction Firm Branch License .....	fifty dollars (\$50.00)
Gallery Branch License .....	fifty dollars (\$50.00)
Auctioneer Education and Recovery Account Fee .....	fifty dollars (\$50.00)

Licenses are valid for two years from the date of their issuance and may be renewed within the sixty (60) days immediately preceding their date of expiration.

(3) A licensee shall pay a one-time fee of one hundred and fifty dollars (\$150.00) for the retirement of an auctioneer or apprentice auctioneer license. An application for the activation of a retired license shall be accompanied by an application fee of twenty-five (\$25.00) dollars, the applicable license fee and the Auctioneer Education and Recovery Account fee.

(4) An applicant who fails a license examination shall pay a fee as set by contract with the Auctioneer Commission license examination administrator, for each subsequent reexamination.

(5) The fee for a replacement license and pocket card is thirty-five dollars (\$35.00).

Authority: T.C.A. §§ 62-19-106, 62-19-111 and 62-19-116.

Rule 0160-1-.15 Nonresident Auctioneer is amended by deleting the rule in its entirety and substituting the following language so that as amended the rule shall read:

0160-1-.15 Nonresident Auctioneer

(1) Disciplinary sanctions against a nonresident licensee imposed by the licensee's home state or any other state shall be grounds for disciplinary action by the Commission in accordance with T.C.A. § 62-19-112 and these rules.

(2) Each application for a nonresident auction firm license shall be accompanied by documentation from a bank that includes the name and address of the bank, the account number of the nonresident auction firm's escrow account and the signature and title of the bank officer issuing the documentation. The documentation shall further include a statement signed by an owner or other appropriate member of the auction firm, authorizing the Tennessee Auctioneer Commission, or its agents, to audit the escrow account.

Authority: T.C.A. §§ 62-19-106, 62-19-112 and 62-19-117.

Repeals

Rule 0160-1-.07 Punishment for conviction is repealed.

Authority: T.C.A. § 62-19-106.

*The rulemaking hearing rules set out herein were properly filed in the Department of State on the 28th day of February, 2001 and will become effective on the 14th day of May, 2001.*